

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

HARRY ANTHONY SCHEINA, III,)	
)	
Plaintiff,)	
)	
v.)	18-CV-03210-S-BP
)	
JAMES SIGMAN, <i>et al.</i>)	
)	
Defendants.)	JURY TRIAL DEMAND

DEFENDANT TEXAS COUNTY, MISSOURI'S
MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

COMES NOW Defendant Texas County, Missouri ("Pevely"), by and through undersigned counsel, and for its Motion to Dismiss Plaintiff's First Amended Complaint, states as follows:

1. Plaintiff filed his Amended Complaint on February 19, 2019, naming Texas County, Missouri as a defendant for the first time. [Doc. #31]
2. Plaintiff's Amended Complaint makes allegations against Sheriff James Sigman, in his official capacity as well as his individual capacity, Jennifer Tomaszewski in only her individual capacity, and Texas County. [Doc. #31, para. 7-9]
3. The Complaint contains five counts: (I) "Deliberate Indifference to Scheina's Medical Needs in Violation of 42 U.S.C. §1983 – Defendant Jennifer Tomaszewski," (II) "Deliberate Indifference to Scheina's Medical Needs in Violation of 42 U.S.C. §1983 – Defendant James Sigman," (III) "Deliberate Indifference to Scheina's Medical Needs in Violation of 42 U.S.C. §1983 – Defendants James Sigman and Texas County," (IV) "Deliberate Indifference to Scheina's Medical Needs in Violation of 42 U.S.C. §1983 – Defendant Texas County," and (V) "Deliberate Indifference to Scheina's Medical Needs in Violation of 42 U.S.C. §1983 – Failure to Adequately Supervise Tomaszewski Defendant Sigman [sic]". [Doc. #31]

4. In an official-capacity suit, the real party in interest is the governmental entity and not the named official. *Hafer v. Melo*, 502 U.S. 21, 25 (1991); *see also Graham*, 473 U.S. at 166 (“as long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity”).

5. Thus, for the reasons contained herein and in the accompanying Suggestions in Support, Count III as to Texas County and IV in its entirety should be dismissed as redundant to the official capacity claims alleged Sheriff Sigman which have already been pending for more than a year.

WHEREFORE, Defendant Texas County, Missouri respectfully requests this honorable Court enter its order dismissing Count III as to Texas County and Count IV in its entirety, with prejudice, and such other relief as this court deems just and proper under the circumstances.

Respectfully submitted,

FISHER PATTERSON SAYLER & SMITH, L.L.P.

/s/ Jasmine Y. McCormick

Portia C. Kayser, #63527MO

Jasmine Y. McCormick, #66386MO

1010 Market Street, Suite 1650

St. Louis, MO 63101

Telephone: (314) 561-3675

Facsimile: (314) 571-6792

pkayser@fisherpatterson.com

jmccormick@fisherpatterson.com

Attorneys for Defendant Texas County, Missouri

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing document was filed via the Court's electronic filing CM/ECT system this 21st day of March, 2019, that all parties are represented by counsel who are registered with and will received service through the same.

/s/ Jasmine Y. McCormick